

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2637

**FISCAL
NOTE**

BY DELEGATES ESPINOSA, STATLER, UPSON, BLAIR,
WILSON, WESTFALL, ROMINE, R., HIGGINBOTHAM,
HARSHBARGER, COOPER AND FOLK

[Introduced February 21, 2017; Referred
to the Committee on Education then Finance.]

1 A BILL to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating
2 to employment of retired teachers and prospective employable professional personnel in
3 areas of critical need and shortage; including speech pathologists and school nurses in
4 definition of teacher or substitute teacher for purposes of employment of retired teachers
5 beyond the post-retirement limit; establishing uniform date retirement must become
6 effective for eligibility for employment as critical needs substitute; clarifying reporting
7 requirement to legislative committee; extending date for expiration of provisions related to
8 employment of retired teacher as substitute beyond the post-retirement limit; eliminating
9 requirement that county policy for employment of prospective employable professional
10 personnel be based on areas of critical need and shortage identified by state board;
11 requiring posting of notice of critical need and shortage area positions prior to making
12 offers of employment; limiting employment of prospective employable professional
13 personnel to certain candidates at job fair who will commence employment at the next
14 employment term; changing limit on number of prospective employable professional
15 personnel that may be employed to number required to fill positions posted; clarifying
16 action required for prospective employable professional personnel to obtain regular
17 employment status; and clarifying that provisions relating to prospective employable
18 professional personnel do not prevent filling posted vacancy at any time in accordance
19 with other provisions.

Be it enacted by the Legislature of West Virginia:

1 That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-3. Employment of substitute teachers; employment of retired teachers as
substitutes in areas of critical need and shortage; and employment of prospective
employable professional personnel.**

1 (a) The county superintendent, subject to approval of the county board, may employ and
2 assign substitute teachers to any of the following duties:

3 (1) Fill the temporary absence of any teacher or an unexpired school term made vacant
4 by resignation, death, suspension or dismissal;

5 (2) Fill a teaching position of a regular teacher on leave of absence; and

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent
7 from class without loss of pay, providing the absence is approved by the Board of Education in
8 accordance with the law.

9 The substitute shall be a duly certified teacher.

10 (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher
11 who has been assigned as a classroom teacher in the same classroom continuously for more
12 than one half of a grading period and whose assignment remains in effect two weeks prior to the
13 end of the grading period, shall remain in the assignment until the grading period has ended,
14 unless the principal of the school certifies that the regularly employed teacher has communicated
15 with and assisted the substitute with the preparation of lesson plans and monitoring student
16 progress or has been approved to return to work by his or her physician. For the purposes of this
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as
18 defined in section one, article one of this chapter.

19 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified
20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature
22 further finds that diverse circumstances exist among the counties for the expanded use of retired
23 teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage
24 for substitute teachers" means an area of certification and training in which the number of
25 available substitute teachers in the county who hold certification and training in that area and who
26 are not retired is insufficient to meet the projected need for substitute teachers.

27 (2) For the purposes of this subsection:

28 (A) “Area of critical need and shorts for substitute teachers” means an area of certification
29 and training in which the number of available substitute teachers in the county who hold
30 certification and training in that area and who are not retired is insufficient to meet the projected
31 need for substitute teachers; and

32 (B) “Teacher or substitute teacher” includes speech pathologists and school nurses.

33 ~~(2)~~ (3) A person receiving retirement benefits under article seven-a, chapter eighteen of
34 this code or who is entitled to retirement benefits during the fiscal year in which that person retired
35 may accept employment as a critical needs substitute teacher for an unlimited number of days
36 each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise
37 entitled if the following conditions are satisfied:

38 (A) The county board adopts a policy recommended by the superintendent to address
39 areas of critical need and shortage for substitute teachers;

40 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in
41 the county in accordance with the definition of area of critical need and shortage for substitute
42 teachers set forth in subdivision (1) of this subsection;

43 (C) The policy provides for the employment of retired teachers as critical needs substitute
44 teachers during the school year on an expanded basis in areas of critical need and shortage for
45 substitute teachers as provided in this subsection;

46 (D) The policy provides that a retired teacher may be employed as a substitute teacher in
47 an area of critical need and shortage for substitute teachers on an expanded basis as provided
48 in this subsection only when no other teacher who holds certification and training in the area and
49 who is not retired is available and accepts the substitute assignment;

50 (E) The policy is effective for one school year only and is subject to annual renewal by the
51 county board;

52 (F) The state board approves the policy and the use of retired teachers as substitute

53 teachers on an expanded basis in areas of critical need and shortage for substitute teachers as
54 provided in this subsection; and

55 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond
56 the post-retirement employment limitations established by the Consolidated Public Retirement
57 Board, the superintendent of the affected county submits to the state board in a form approved
58 by the Consolidated Public Retirement Board and the state board, an affidavit signed by the
59 superintendent stating the name of the county, the fact that the county has adopted a policy to
60 employ retired teachers as substitutes to address areas of critical need and shortage, the name
61 or names of the person or persons to be employed as a critical needs substitute pursuant to the
62 policy, the critical need and shortage area position filled by each person, the date that the person
63 gave notice to the county board of the person's intent to retire, and the effective date of the
64 person's retirement. Upon verification of compliance with this section and the eligibility of the
65 critical needs substitute teacher for employment beyond the post-retirement limit, the state board
66 shall submit the affidavit to the Consolidated Public Retirement Board.

67 ~~(3)~~ (4) Any person who retires and begins work as a critical needs substitute teacher within
68 the same ~~employment term~~ fiscal year in which that person retired shall lose those retirement
69 benefits attributed to the annuity reserve, effective from the first day of employment as a retiree
70 critical needs substitute in that ~~employment term~~ fiscal year and ending with the month following
71 the date the retiree ceases to perform service as a critical needs substitute teacher.

72 ~~(4)~~ (5) Retired teachers employed to perform expanded substitute service pursuant to this
73 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not
74 eligible for additional pension or other benefits paid to regularly employed employees and may
75 not accrue seniority.

76 ~~(5)~~ (6) A retired teacher is eligible to be employed as a critical needs substitute to fill a
77 vacant position only if the retired teacher's retirement became effective ~~at least twenty days before~~
78 ~~the beginning of the employment term~~ before the first day of July preceding at least the fiscal year

79 during which he or she is employed as a critical needs substitute.

80 ~~(6)~~ (7) When a retired teacher is employed as a critical needs substitute to fill a vacant
81 position, the county board shall continue to post the vacant position until it is filled with a regularly
82 employed teacher who is fully certified or permitted for the position.

83 ~~(7)~~ (8) When a retired teacher is employed as a critical needs substitute to fill a vacant
84 position, the position vacancy shall be posted electronically and easily accessible to prospective
85 employees as determined by the state board.

86 ~~(8)~~ (9) Until this subsection is expired pursuant to subdivision ~~(9)~~ (10) of this subsection,
87 the state board, annually, shall report to the Joint Committee on Government and Finance prior
88 to February 1 of each year. ~~Additionally, a copy shall be provided to the Legislative Oversight~~
89 ~~Commission on Education Accountability.~~ The report shall contain information indicating the
90 effectiveness of the provisions of this subsection on reducing the critical need and shortage of
91 substitute teachers including, but not limited to, the number of retired teachers, by critical need
92 and shortage area position filled and by county, employed beyond the post-retirement
93 employment limit established by the Consolidated Public Retirement Board, the date that each
94 person gave notice to the county board of the person's intent to retire, and the effective date of
95 the person's retirement. A copy of the report shall also be provided to the Legislative Oversight
96 Commission on Education Accountability.

97 ~~(9)~~ (10) The provisions of this subsection shall expire on ~~June 30, 2017~~ June 30, 2020.

98 (d) (1) Notwithstanding any other provision of this code to the contrary, each year a county
99 superintendent may employ prospective employable professional personnel on a reserve list at
100 the county level subject to the following conditions:

101 (A) The county board adopts a policy authorizing the employment of prospective
102 employable professional personnel to address areas of critical need and shortage as identified by
103 the state board; ~~The policy shall include authorization to employ prospective employable~~
104 ~~professional personnel;~~

105 (B) The county board posts a notice of the ~~areas of~~ critical need and shortage area
106 positions in the county in a conspicuous place in each school for at least ten working days prior
107 to making offers of employment to prospective candidates; and

108 (C) There are not any potentially qualified applicants available and willing to fill the
109 position.

110 (2) Prospective employable professional personnel may only be employed from
111 candidates at a job fair who have or will graduate from college in the current school year and will
112 commence employment at the next employment term. ~~or whose employment contract with a~~
113 ~~county board has or will be terminated due to a reduction in force in the current fiscal year.~~

114 (3) The number of prospective employable professional personnel employed ~~are~~ is limited
115 ~~to three full-time prospective employable professional personnel per one hundred professional~~
116 ~~personnel employed in a county or twenty-five full-time prospective employable professional~~
117 ~~personnel in a county, whichever is less~~ the number required to fill the critical need and shortage
118 area positions posted in accordance with subdivision (1) of this subsection.

119 (4) Prospective employable professional personnel shall be granted benefits at a cost to
120 the county board and as a condition of the employment contract as approved by the county board.

121 (5) Regular employment status for prospective employable professional personnel may
122 be obtained only upon recommendation by the superintendent and approval by the county board
123 following consideration of the qualifications of the candidate in accordance with the applicable
124 provisions of section seven-a, article four of this chapter.

125 (6) Nothing in this subsection prevents a county board from filling a posted vacancy in an
126 established, existing or newly created position at any time in accordance with the other provisions
127 of this chapter.

NOTE: The purpose of this bill is to extend the date for expiration of provisions related to the employment of a retired teacher as a substitute beyond the post-retirement limit in areas of critical need and shortage to June 30, 2020. Speech pathologists and school

nurses are added for inclusion under these provisions. The bill also addresses the employment of prospective employable professional personnel in areas of critical need and shortage by allowing county-level determination of the areas, requiring a notice of the positions prior to making offers of employment, and limiting employment to the number of candidates at job fairs needed to fill the positions for the next employment term.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.